

In the Matter of Arbitration Between:

State of Illinois, Department)
Of Central Management Services and)
Department of Human Services,)
Employer)
And)
AFSCME Council 39,)
Union)

Arbitration No. 6156

Before Jerome A. Dickemper, Arbitrator

Hearing held on September 1, 2011 in Chicago, Illinois
Opinion and Award issued on September 14, 2011

Appearances for the Employer:

Justin Smock, Counsel
Michael Hurt, Deputy Director Division of Departmental Disabilities
Jayma Tucker, Public Service Administrator, Division of Developmental Disabilities
Mark A. Samaras, Public Service Administrator, Bureau of Labor Relations
Robert Scanlan, Retired Bureau Chief

Appearances for the Union:

Helen Thornton, Counsel
Cynthia Joiner, Social Services Program Planner III, Grievant

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CENTRAL MANAGEMENT SERVICES
LABOR RELATIONS

OPINION AND AWARD

INTRODUCTION

This matter is before the Arbitrator based on the grievance of AFSCME Council 31 and Local 2258 (the Union) protesting the discharge of Cynthia Joiner (the Grievant) from her employment with the State of Illinois, Department of Human Services (the State).

A hearing was held on September 1, 2011 in Chicago, Illinois. The parties had the opportunity to call, examine and cross-examine witnesses and to introduce documentary evidence. There were no procedural issues raised by the parties. The parties made oral arguments at the close of the case and no briefs were to be filed.

ISSUES

Was there just cause for the discharge of Cynthia Joiner and, if not, what is the appropriate remedy?

BACKGROUND FACTS

The Illinois Department of Human Services (DHS) provides residential care and treatment for developmentally disabled individuals at sites throughout the State. It employs Social Services Program Planners like Grievant at two offices, one in Chicago that monitors facilities and programs north of Springfield, and one in Springfield that monitors those activities to the south. Grievant worked at the Chicago office.

Grievant was first employed by the State in 1986. Between 1986 and 2005, she held positions that did not require State reimbursed travel on her part. In 2005, she began working in her current position. Her duties then included conducting audits, CILAs (Community Integrated Living Arrangements), to ensure compliance with State rules and regulations. These duties required her to complete Travel Vouchers to obtain reimbursement for out of pocket costs.

Joint Exhibit 4, the Travel Guide for State employees, requires for Travel Vouchers that "Accurate mileage calculations must be noted on the voucher if a personal vehicle is used." (at p. 78, emphasis added). At Joint Exhibit 5, a 2006 Travel Update, in bold print, provided "**Again, the State of Illinois mileage reimbursement rate for the use of personal vehicles has increased from 40.5 cents per mile to 44.5 cents per mile effective July 1, 2006.**" (Underlining added).

Joint Exhibit 6, the DHS travel policy concerning use of Travel Vouchers has several pertinent provisions:

Section I, B: All Travel Vouchers, form (C-10), must be approved and signed by the supervisor for processing no later than the 20th calendar day of the month following the month in which travel occurred...(at p. 1, emphasis added).

Section II, C: Accurate mileage calculations must be noted on the voucher if a personal vehicle is used. (at p. 2, emphasis added).

Section II, F: When submitting a travel voucher that includes direct bill of an Enterprise rental vehicle, a copy of the Enterprise Rent-A-Car Vehicle Request Form, approved and signed by the employee's supervisor, must be attached to the travel voucher. (at p. 2, emphasis added).

Section V, A Provides the Travel Voucher must contain 9: The number of miles driven (use whole miles only) in a privately owned vehicle and the current rate of reimbursement. (Please verify math for rate of reimbursement-current rate times number of miles driven); Note: When using a State owned or authorized rental vehicle, you may not claim mileage. (at p. 3, emphasis added).

18: Employee's direct supervisor or designee's signature and date. Signature must be original (no initialed signatures) and must be in ink. (at p. 3).

From sometime in 2006 until May 2008, Grievant was the acting supervisor of the Chicago office. In this role, she was responsible for reviewing and approving Travel Vouchers of her subordinates. Sometime before May, 2008, Grievant received a full day of training on the rules and procedures involving Travel Vouchers. (See Grievant's email to Jayma Tucker dated 3-17-09, p. 18 of Employer Exhibit 1).

Grievant testified that Robert Scanlan told her that she could claim mileage or gasoline expenses when she drove a rental car on State business. Scanlan testified that he did not say that. Some documents in the record also show that Scanlan signed some required travel forms and that others had his printed name (Compare Employer Exhibit 1, p. 41 an Enterprise Rent-A-Car Vehicle Request Form bearing Scanlan's signature with p. 44 a Travel Voucher bearing his printed name). Scanlan testified he never authorized anyone to sign his name to travel documents.

Michael Hurt testified he never authorized anyone to sign or print his name on Travel Vouchers. Grievant testified that she signed her name and printed Hurt's name on a Travel Voucher dated May 20, 2008. (See, p. 51 Employer Exhibit 1 and compare with p. 47 a Travel Voucher dated 1-9-08 signed by Hurt). Grievant also admitted printing Mr. Hurt's name on vehicle request forms (See, p. 53, p. 56, p. 59, p. 61 and p. 63 of Employer Exhibit 1). Grievant admitted printing the name of her supervisor, Willie Fullilove, on vehicle request forms (See, e.g. p. 65 of Employer Exhibit 1).

Robert Scanlan was Grievant's supervisor from 2006 to November 2007 when Mr. Hurt took over during a transition and merger of units in DHS. Mr. Fullilove was hired in July, 2008 and stayed only two months. Jayma Tucker became Grievant's supervisor around the middle of August, 2008.

Scanlan, Hurt and Tucker testified they were unaware that Grievant was claiming mileage reimbursement on Travel Vouchers when she drove an Enterprise rental car that was paid for by the State.

EVENTS LEADING TO GRIEVANT'S DISCHARGE

On December 8, 2008, Grievant was supposed to travel to Freeport, Illinois for a meeting concerning the Willowglen facility. When Grievant did not attend the scheduled meeting, Jayma

Tucker became concerned because there was a heavy snowfall. Tucker remembered that Grievant had requested a rental car, so Tucker called Enterprise and was given a description of the car and the license plate number. Grievant eventually arrived and completed her duties in Freeport.

In January, 2009, when Grievant submitted her Travel Voucher for Tucker's approval, Tucker noted that Grievant was claiming mileage reimbursement for the Freeport trip. Tucker remembered that Grievant used a rental car and therefore was not entitled to claim mileage. On January 23, 2009, Tucker started a chain of emails with Grievant concerning the mileage reimbursement issue. See pages 15-17 of Employer Exhibit 1.

Tucker questioned whether Grievant used a rental car for other December trips. Grievant did not answer directly, but first claimed she could seek either mileage or gas receipts but not both. Tucker clarified that mileage could not be claimed if a rental car was used. Grievant then stated on 1-26-09 at 9:14 AM "Will do. You are correct and we are under the same impression in all cases. A revision for December will be submitted with the justification sheet. At 9:18 AM Tucker asked, "Have there been any times in the past when you turned in mileage for rental cars? Do you need to submit corrected vouchers for previos (sic) months?" Grievant answered at 9:19 AM, "No." Grievant testified at the hearing that her "No" answer was to the second question, not the first. When she submitted her revised travel voucher Grievant still sought mileage reimbursement for the Freeport trip and the other December Enterprise rental. Tucker again corrected her on the Freeport trip. At that point, Tucker still assumed Grievant had driven her personal vehicle on the other trip.

As a result of her interactions with Grievant over the December Travel Voucher, Tucker sent an email to the others in the Chicago office to ask if any of them had claimed mileage for rental cars in the past. One employee, Gloria Frampton, admitted she had, based on the understanding expressed by Grievant in her first email response that employees could claim either mileage or gas but not both. Frampton worked with the State's Fiscal Services office to revise her Travel Voucher and reimburse the State. Frampton was not disciplined as a result.

Tucker had her assistant get information regarding Grievant's prior car rentals and her claims for mileage. When this turned up prior claims by Grievant, Tucker reported this to her supervisor. Eventually, an investigation was commenced by the Office of Executive Inspector General (OEIG).

The OEIG investigation lasted from February 2, 2009 when the original complaint was received until November 18, 2010 when the OEIG transmitted its Final Summary Report to the Department of Human Services. Grievant was interviewed on three occasions, 8-18-09, 11-20-09 and 4-5-09. No one from the OEIG testified as to the content of those interviews, so the Arbitrator gives them no weight. Grievant testified it was not until the final interview on 4-5-09 that she finally understood she could not receive reimbursement for mileage when she drove a rental car. The very next day, April 6, 2009, she received an email from Jayma Tucker (Union Exhibit 1) seeking correction of her March 2010 Travel Voucher in which Grievant sought mileage for a rental car.

The OEIG investigation concluded that Grievant violated State travel regulations and DHS policy by billing the State and being paid for mileage when driving rental cars paid for by the State and that Grievant violated DHS policy in falsifying official DHS documents regarding her travel requests and misrepresenting the status of supervisory approval. The OEIG recommended Grievant's discharge.

Grievant was charged with conduct unbecoming a State employee and, after a pre-termination hearing, was discharged as of January 31, 2011.

At the hearing, Grievant testified that she did not intend to commit fraud, that she wanted her job back, that she would reimburse the State, that she did what she was told to do and never received training on Travel Vouchers.

Grievant admitted printing Mr. Hurt's name on travel documents based on a conversation about Hurt leaving the country and that she faxed the documents to Springfield. She was not trying to hide anything.

On rebuttal, Mr. Hurt testified he did not talk to Grievant about leaving the country and never told Grievant or anyone else they could print his name on travel documents.

POSITIONS OF THE PARTIES

Position of the State

The State contends that, while it did not have good management controls in place to catch what Grievant was doing, Grievant was fully aware that what she was doing was not allowed. Further, she was asked whether she needed to correct prior Travel Vouchers and had the opportunity to fix or eliminate the problem. Grievant made the choice not to do so. Grievant's actions were not mistakes. Obtaining any amount of State funds wrongly justifies discharge and cannot be tolerated or minimized.

Position of the Union

Grievant is a long term, 25 year employee, with no record of prior discipline. She made a mistake and continued to make the same mistake even after it was called to her attention. She just didn't get it.

Grievant was not trying to hide anything. She provided the documents she printed names on to her supervisors. Furthermore, fraud or dishonesty requires a showing of intent that has not been proven in this case.

No member of management was disciplined. Her supervisor's email was not clear to her when she answered "No." While some punishment is due, the punishment must fit the crime and there is not just cause for discharge.

PRIOR ARBITRATION AWARDS

The parties called attention to two prior arbitration awards. The Arbitrator has reviewed the awards.

DECISION AND ANALYSIS

Employee dishonesty or theft is often considered a ground for discharge for a first offense. The burden is on the Employer to prove by accurate, reliable and credible evidence the element of intentional wrong doing. Usually, the proof must show the employee acted knowingly

and willfully to deprive the Employer of its property. This element distinguishes conduct in which the employee exercised poor judgment, made an inadvertent error, was excusably ignorant, committed a good faith mistake or had implied permission. The existence of the intent element often turns on credibility.

Grievant here admits that she claimed mileage reimbursement for occasions when she was driving a rental car paid for by the State. The OEIG investigation identified about 25 such occasions. After crediting Grievant with gasoline expenses she could rightfully have recovered, she received over \$3,000 which she was not entitled to receive.

Grievant claims employees were told they could receive reimbursement for rental car mileage or gasoline expenses, but not both. At least one other employee in the Chicago office also claimed such reimbursement. Accordingly, the Arbitrator will give the Grievant the benefit of the doubt as to her original intent and as to being mistaken in this regard.

Despite giving Grievant this benefit of the doubt, there is counter-balancing evidence putting her credibility at issue. Specifically, I credit the testimony of Robert Scanlan and Michael Hurt that neither of them gave Grievant permission to sign their names or print their names on travel documents. While Grievant deemed there to be some kind of significance between printing a supervisor's name on a Enterprise Rent-A-Car Vehicle Request Form, which she admitted doing, and printing a supervisor's name on a Travel Voucher, which she denied doing; I find that Grievant did print Robert Scanlan's name on a Travel Voucher (Employer Exhibit 1, p. 44) and that Grievant did print Michael Hurt's name on a Travel Voucher (Employer Exhibit 1, p. 51). Further, while Grievant denied ever receiving any training on a travel documentation at the hearing, her March 17, 2009 email admits she received a full day of such training prior to May, 2008. See Employer Exhibit 1, p. 18. Also, Grievant had to be somewhat familiar with DHS travel policies during the period from 2006 to May, 2008 when she was acting supervisor responsible for reviewing and approving travel documentation. That policy contains "Note: When using a State owned or authorized rental vehicle, you may not claim mileage." The same policy requires approval and signature of a Travel Voucher by the employee's supervisor. See, Joint Exhibit 6, p. 3, Section V. A. 9 and 18.

What Did "No" Mean?

Assuming Grievant originally believed she could claim mileage when driving a rental car paid for by the State, did it really take her until the third meeting with the OEIG investigators on April 5, 2010 to understand what Jayma Tucker first told her explicitly on 1-26-09 at 9:09 AM, "The travel rules are clear that mileage reimbursement applies only to personal vehicles used on state business. You may not claim mileage when you drive a state owned vehicle or a rental vehicle that is direct-billed to the state. (You may turn in receipts for gas when you have out-of-pocket expenses for state-owned and rental vehicles..." (Emphasis in original). Tucker concluded the email by saying "You do need to revise the December travel voucher, removing the mileage reimbursement for rental vehicle for the Freeport trip..."

Grievant responded at 9:14AM "Will do...You are correct and we are under the same impression in all cases..."

When Tucker asked at 9:18 AM, "Have there been any times in the past when you turned in mileage for rental cars? Do you need to submit corrected vouchers for previos (sic) months?"

Critically, Grievant answered at 9:19 AM "No."

Tucker took Grievant's answer at face value and believed that both questions had been answered in the negative. Grievant testified, however, that she answered "no" only to the second question on the basis that the prior Travel Vouchers had already been approved. This answer came in the face of Tucker telling Grievant that Tucker had assumed that trips for which Grievant had turned in mileage claims to her were for trips Grievant used her own vehicle and not an Enterprise vehicle, and that Tucker assumed prior supervisors thought the same thing.

The Arbitrator cannot accept Grievant's explanation of her "no" answer. Grievant appeared at the hearing in full possession of her faculties. She was actively involved in listening to the testimony of the other witnesses, reviewing documents and making notes to discuss with the Union's counsel. She testified she had a college education and seemed to be an intelligent and capable individual.

The concept that you can't claim mileage on a State paid rental vehicle is neither difficult to understand nor counterintuitive. Jamya Tucker accurately paraphrased the DHS policy in her email to Grievant and Grievant acknowledged "You are correct." It is too much for this Arbitrator to believe, as urged effectively by Union counsel, that Grievant just didn't "get it." When Grievant answered "No," she meant to lead her supervisor to believe both that she had not claimed mileage for rental cars in the past and that she need not submit corrected vouchers for previous months because they were correct as submitted. In so doing, Grievant was trying to keep reimbursements for mileage that she then knew were improper.

Out of curiosity, the Arbitrator reviewed the Travel Vouchers submitted to Jayma Tucker for September, October and November, 2008. In this review, the Arbitrator compared the mileage claimed by Grievant for trips Grievant used a rental car, with the mileage actually shown on the Enterprise records from odometer readings. Grievant was reimbursed for approximately 3163 miles claimed. The Enterprise odometer readings showed the vehicles were driven only 2007 miles. While mileage claimed was only lightly touched on at the hearing, and Grievant claimed to use MapQuest estimated miles rather than odometer readings, the Arbitrator is hard-pressed to understand how Grievant's claimed mileage could be off by over 1150 miles in three months.

Mitigating Factors

The Union argues that Grievant's long tenure and good record as an employee should be taken into account in assessing the penalty of discharge imposed by the State. This is not a case like Arbitration No. 5343 where Arbitrator Nathan converted the discharge to a reinstatement without backpay where he found the State evidence had failed to prove theft or fraud by the long term employee with a clean record. It is more akin to Arbitration 4467 where Arbitrator Torosion found the employee acted intentionally and not by mistake. There was no room for mitigation of the punishment because of the seriousness of the misconduct.

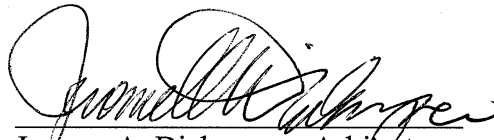
Because the Arbitrator believes the Grievant falsified her answer to her supervisor about her prior mileage claims and about the necessity to revise her prior Travel Vouchers, the Arbitrator will follow the accepted practice of arbitrators generally. "Where an employee is found to have deliberately falsified a document for financial gain, severe discipline is generally upheld." Brand and Biren, Discipline and Discharge in Arbitration (BNA 2nd Ed. 2008) at p. 304. Here, Grievant misrepresented her prior mileage claims when directly asked and denied any need to correct her prior travel vouchers. She also misrepresented supervisory approval of travel

documents including many vehicle requests forms and at least two Travel Vouchers without authorization. Even if she did not also inflate her claimed miles driven, which the Arbitrator doubts, her misconduct clearly justifies her discharge.

Award

Just cause existed for the discharge of Grievant. The grievance is denied. Pursuant to Article V, Section 2 of Joint Exhibit 1, the expenses and fees of the Arbitrator are assessed against the Union.

Dated: September 14, 2011



Jerome A. Diekemper, Arbitrator